

NO. 5:13-CT-3300-F

Defendant.

ORDER

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lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989). “Legally frivolous claims are based on an indisputably meritless legal theory and include claims of infringement of a legal interest which clearly does not exist.” Adams v. Rice, 40 F.3d 72, 75 (4th Cir. 1994) (quotations omitted). Factually frivolous claims lack an “arguable basis” in fact. Neitzke, 490 U.S. at 325.

The standard used to evaluate the sufficiency of the pleading is flexible, and a pro se complaint, “however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) (quotation omitted). Erickson, however, does not “undermine [the] requirement that a pleading contain ‘more than labels and conclusions.’” Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007)); see Ashcroft v. Iqbal, 556 U.S. 662, 678–79 (2009); Coleman v. Md. Court of Appeals, 626 F.3d 187, 190 (4th Cir. 2010), aff’d, 132 S. Ct. 1327 (2012); Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250, 255–56 (4th Cir. 2009); Francis v. Giacomelli, 588 F.3d 186, 193 (4th Cir. 2009).

Plaintiff contends that he has received inadequate health care. However, Plaintiff does not allege that Defendant was deliberately indifferent to his serious medical needs, but rather that Defendant was negligent in his diagnosis. Indeed, Plaintiff describes his claim, in part, as one for “medical malpractice.” Am. Compl. [DE-6-1], pp. 4–5. For example, Plaintiff concedes Defendant provided treatment for his medical needs. Compl. [DE-1], p. 4. However, Plaintiff contends that he “was misdiagnos[ed] by [Defendant].” Pl. April 24, 2013 Letter [DE-5], p. 2. Likewise, Plaintiff asserts that Defendant exhibited “bad medical judgment.” Am. Compl. [DE-6-1], p. 4. As relief, Plaintiff requests that Defendant be “fired.” Compl. [DE-1], p. 4.

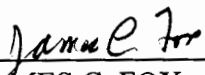
To state a claim under 42 U.S.C. § 1983 for inadequate medical care, an incarcerated prisoner must show deliberate indifference to his serious medical needs in violation of his Eighth Amendment rights. See, e.g., Bell v. Wolfish, 441 U.S. 520, 535 n.16 (1979). In order to prove such a claim, Plaintiff “must demonstrate that the officers acted with ‘deliberate indifference’ (subjective) to [his] ‘serious medical needs’ (objective).” Iko v. Shreve, 535 F.3d 225, 241 (4th Cir.2008) (quoting Estelle v. Gamble, 429 U.S. 97, 104 (1976)). A prisoner, however, is not entitled to choose his course of treatment. See Russell v. Sheffer, 528 F.2d 318, 318-19 (4th Cir.1975) (per curiam). Likewise, mere negligence in diagnosis or treatment does not state a constitutional claim. Estelle, 429 U.S. at 105-06. Thus, to the extent Plaintiff alleges that Defendant’s treatment was ineffective, this does not give rise to a constitutional violation. See, e.g., Russell, 528 F.2d at 319; Starling v. United States, 664 F.Supp.2d 558, 569-70 (D.S.C.2009); see also Johnson v. Quinones, 145 F.3d 164, 167 (4th Cir. 1998) (finding that negligent acts are not sufficient to establish a constitutional violation). In sum, Plaintiff, at most, states a claim for negligence or medical malpractice, which does not arise to the level of an Eighth Amendment violation. See Estelle, 429 U.S. 97, 105-06 (1976); Sosebee v. Murphy, 797 F.2d 179, 181 (4th Cir.1986). Accordingly, Plaintiff’s claims shall be DISMISSED.

CONCLUSION

Plaintiff’s motions to amend [DE-6, 7] are ALLOWED. However, for the reasons stated above, the matter is DISMISSED as frivolous. Plaintiff’s remaining motions [DE-9, 10]¹ are DENIED AS MOOT, and the Clerk of Court is DIRECTED to close the case.

¹ In his remaining motions, Plaintiff seeks, *inter alia*, a hearing on his claims.

SO ORDERED. This the 27th day of October, 2014.



JAMES C. FOX
Senior United States District Judge